UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 816

Case No. 912: AL-HAFEDH

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Samar Sen, Vice-President; Ms. Deborah Taylor Ashford;

Whereas, on 26 June and 12 October 1995, Aisser Al-Hafedh, a staff member of the United Nations and a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 6 February 1996, the Applicant, after making the necessary corrections, again filed an application containing pleas requesting the Tribunal:

> "... to consider my entitlement for [payment of a] termination indemnity and [to] be treated in the same manner as those of my colleagues in UNRWA declared redundant."

Whereas the Respondent filed his answer on 28 May 1996;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Agency on 1 March 1989, on a one year temporary indefinite appointment as an Area

staff member, as a Secretary "A", at the grade 9, step I level, in the Office of the Coordinator of Operations at UNRWA Headquarters, Vienna.

On 4 August 1993, the Administration decided to assign the Applicant as secretary to both the Coordinator of Operations and the Assistant to the Coordinator of Operations, with the following proviso: "To the extent that [the Applicant's] services are not required in that office during the present absence of both officers, she will be available for duty elsewhere in the Agency." With effect from 4 October 1993, due to the continued absence of the Coordinator of Operations and the Assistant to the Coordinator of Operations, the Applicant was temporarily assigned to act as secretary to the Special Adviser to the Commissioner-General.

On 4 May 1994, the Applicant wrote to the Director of Administration and Human Resources, informing him that she had accepted an offer of employment with the United Nations Drug Control Programme (UNDCP) beginning 1 June 1994. She requested that she be treated in the same manner as those of her colleagues who were declared redundant, on the grounds of the Commissioner-General's statement on 19 January 1994, that "'the Coordinator of Operations would be transferred to the West Bank'". The post of Assistant to Coordinator of Operations (to whom she had been reporting) had been abolished in October 1993. In a reply dated 10 May 1994, the Officer-in-Charge, Department of Administration and Human Resources, stated: "As you are aware, you have not been declared redundant; in fact, you will be replaced on your departure. Therefore, it is not possible for the Agency to accede to your request."

The Applicant separated from the service of the Agency at the close of business on 31 May 1994.

On 15 June 1994, the Applicant requested the Director of Administration and Human Resources to review the decision not to pay her a termination indemnity.

On 5 August 1994, the Director of Administration and Human Resources replied to the Applicant, that:

> "... the Agency is not in a position to accede to your request as you were not declared redundant. As you are fully aware, you resigned from UNRWA to take up a post with UNDCP. Pursuant to the Agency Staff Rules, an Area staff member who resigns his of her post is not eligible to receive a termination indemnity."

On 10 August 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 17 May 1995. Its evaluation, judgement and recommendation read as follows:

> "In its deliberations, the Board considered all pertinent rules, regulations and precedents and resolved that the Appellant's case is equivalent to a redundancy case for the following reasons:
>
> A. The situation of suspense, fear and uncertainty of the Appellant's position, particularly after the abolition of the position of the Assistant to Coordinator of Operations (to whom she reported) and the transfer of the Coordinator of Operations, coupled with the general situation of uncertainty created due to the projected move of the Agency Headquarters to the area of operations especially after the relocation of many departments.
>
> B. The temporary arrangement to assign the Appellant to act as Secretary to the Special Adviser to the Commissioner-General which lasted for eight months without confirming the assignment which the Administration failed to exercise to the detriment of the Appellant.
>
> The Board here noted that the Appellant was informed of the said arrangement by copy of a Note for the Record written by the Deputy Director of Administration and Human Resources <u>without receiving an official letter addressed to her</u> by the pertinent Personnel Officer.
>
> The Board believes that the Appellant was <u>NOT</u> properly informed of the decision to assign her to

act as Secretary to the Special Adviser to the Commissioner-General.

The Board also noted that in his Inter-Office Memorandum dated 4 August 1993 which was copied to the Appellant, the Deputy Director of Administration and Human Resources had stated that the Appellant 'will be available for duty elsewhere in the Agency' without any specification of the general meaning of the work 'elsewhere', the fact which caused greater apprehension and uncertainty on the part of the Appellant.

C. The Board is also of the opinion that the case of Ms. [X] is similar to the of the Appellant.

Ms. [X] was transferred from her original area post to an international post within the Agency and was paid [a] termination indemnity, while the Appellant moved from her area post with the Agency to an international post with another UN Agency at a lower grade but was not paid [a] termination indemnity.

The Board fully agrees with the way Ms. [X]'s case was dealt with by the Administration. However, the Board believes that the Appellant should not have been treated on a less favourable basis.

The Board finally sees a similarity between the case of Ms. [X] and that of the Appellant, in that, both their posts were reclassified (downwards) and both incumbents left the Agency's service, the former was paid termination indemnity whereas the latter was not.

RECOMMENDATION

In view of the foregoing, the Board unanimously makes its recommendation that the Administrative decision appealed against be reviewed with a view to paying the Appellant [a] termination indemnity as provided for in the pertinent Area Staff Rules."

On 12 June 1995, the Commissioner-General informed the Applicant as follows:

"I have carefully reviewed the Board's report, and I do not agree with the Board's conclusions and recommendations.

> Area staff rule 109.9 provides that [a] termination indemnity is payable only, inter alia, when the staff member's services have been terminated in the interest of the Agency under Area staff regulation 9.1. However, you have resigned from the Agency's service to take a position with another organization; therefore, under the Agency's rules you are not entitled to a termination indemnity. Thus, I do not accept the Joint Appeals Board 's conclusions and recommendations, and the Administrative decision is upheld. Your appeal is, therefore, dismissed."

On 6 February 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

Because her employment situation with the Agency was so precarious that she was forced to seek employment elsewhere, the Applicant is entitled to be treated in the same manner as those of her UNRWA colleagues who were declared redundant and paid a termination indemnity.

Whereas the Respondent's principal contention is:

The Agency's Area Staff Regulations and Staff Rules provide that a termination indemnity is payable only, inter alia, when a staff member's services have been terminated in the interest of the Agency. The Applicant does not meet this requirement since she resigned from the Agency to take a position elsewhere.

The Tribunal, having deliberated from 14 to 25 July 1997, now pronounces the following judgement.

I. The Applicant occupied a post at UNRWA as Secretary to both the Coordinator of Operations and the Assistant to the Coordinator of Operations. She was then temporarily assigned as Secretary for

the Special Advisor to the Commissioner-General during a lengthy absence of her principal supervisors.

The Applicant accepted a United Nations Drug Control Programme (UNDCP) post, because she was uncertain of her future with UNRWA. There is no reason to doubt this explanation. As she explained in her letter of 4 May 1994, to the Director of Administration and Human Resources, the Coordinator of Operations was to be transferred to the West Bank Field in 1994. The post of Assistant to the Coordinator of Operations was abolished in October 1993.

II. The Applicant elaborates her concern about her situation in a memorandum of 15 June 1994, in which she refers to her assignment as Acting Secretary to the Special Advisor to the Commissioner-General. After six months as Acting Secretary, she had not been confirmed in the post. She was not advised as to whether she would be assigned to that post indefinitely or whether she would be moved to another temporary post.

III. Because of what she viewed as a precarious future with UNRWA, the Applicant accepted a post at a lower grade at UNDCP. After accepting the new post, the Applicant was informed that her UNRWA post at grade 10 was cancelled, and that a new post at grade 8 had been approved.

IV. The Applicant requests that the recommendation of the JAB that she receive a termination indemnity be implemented. In support of her claim, the Applicant relies not only on the facts of her situation but also on the treatment by UNRWA of other staff members.

V. The Joint Appeals Board (JAB) gained access to the personnel files of these staff members. One of these staff members worked as a Senior Secretary. She was transferred from her area post to the

International General Service post of Special Assistant to the Commissioner-General, with a promotion. Following this advantageous transfer, the staff member was paid a termination indemnity. The Administration's response is that the transfer took place at the Agency's request, which necessitated the payment of a termination indemnity.

Another staff member's grade 9 post was abolished, to be established simultaneously in the same Department, at grade 8. The staff member in question was not transferred to the newly established post but was separated and given a termination indemnity; the newly established post remained vacant for four months.

VI. Area staff rule 109.9 provides, inter alia, that "a staff member shall become eligible upon separation to receive a termination indemnity under the provisions of this rule provided that (A) his/her temporary indefinite appointment has been terminated under staff regulation 9.1 in the interests of the Agency. ... No termination indemnity shall be payable under this rule where: ... (B) the staff member's service with the Agency ceases for any reason other than stated in paragraph 1(A) of this rule." Area staff regulation 9.1 provides that "[t]he Commissioner-General may at any time terminate the appointment of any staff member ... in the interest of the Agency."

Clearly the Applicant's appointment was not terminated in accordance with the provisions of area staff rule 109.9. The Applicant's appointment was not terminated by the Commissioner-General.

VII. The Tribunal accepts without difficulty that the Applicant was concerned for her future and indeed may have had good reason for her concern. It also takes into account the Applicant's interpretation of the reclassification of her post. However, the

Tribunal must also take cognizance of the Respondent's contention that the post was not reclassified until after the Applicant's departure and that there is no evidence that the post was to be reclassified during the Applicant's incumbency.

Although the Applicant may well have been placed in a difficult situation, it is too great a leap of logic to convert that situation into a kind of redundancy. In effect, the Applicant chose to describe it as redundancy, but the fact remains that, because she perceived herself to be under great pressure, she chose to leave.

VIII. The Tribunal concludes that the Applicant's case differs in material respects from the cases of the other staff members cited by the JAB. None of the procedures which normally result in redundancy had been initiated and the Applicant chose to leave the service of the Agency. The Applicant, therefore, is not entitled to payment of a termination indemnity.

IX. For the foregoing reasons, the Applicant's claims are hereby rejected.

(Signatures)

Hubert THIERRY
President

Samar Sen
Vice-President

Deborah Taylor ASHFORD
Member

Geneva, 25 July 1997

R. Maria VICIEN-MILBURN
Executive Secretary